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Supreme Court, U.S.
FILED
07-845 DEC 17 2007
OFFICE OF THE CLERK

No. ~~OFFICE OF THE CLERK~~

IN THE

Supreme Court of the United States

In Re: AARON RAISER,
Petitioner,

October Term, 2007

Petition for Writ of Mandamus to
Elizabeth A. Shumaker , the Clerk of Courts
for the
United States Court of Appeals for the Tenth Circuit

Petition for Writ of Mandamus

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Questions Presented for Review

1. (a) Whether it is possible for post-judgment relief to exist in a Federal Court of Appeals, similar to Fed. R. civ. Proc. 60, where denial of the post-judgment relief motion is not harmless?

   (b) Whether the Tenth Circuit's Ruling that once an appeal has been decided that no further motions can be made in that appeal, where Petitioner attempted to file a motion attacking the validity of the Order on the outcome of the appeal due to procedural irregularities which were not, and could not, be discovered until the appeal was decided, where denial of the post-judgment relief motion is not harmless?

   (c) Whether Fed. R. App. Proc. 27 – Motions – should be construed to allow for post-judgment motions?

2. (a) If post-judgment relief is available on appeal, whether a non-judicial, non clerk and non-law clerk employee of the Court of Appeals can in effect decide the outcome of the post-judgment motion by refusing to allow it to be filed, where the motion was filed within 2 weeks of the final judgment, and where the Local rule for the Tenth Circuit mandate that the movant first obtain, or attempt to obtain, the position of opposing counsel prior to filing the motion, where denial of the post-judgment relief motion is not harmless?

(b) Whether a non-judicial, non clerk and non-law clerk employee of the Tenth Circuit can decide to not file a post-judgment motion with the Tenth Circuit for an appeal in that court, where the employee cited no authority for their act, and where no authority for their act is believed to exist, where denial of the post-judgment relief motion is not harmless?

3. Whether the Fed. R. App. Proc. 27(b) - which allows for a party adversely affected by the "court's, or clerk's action" to file a motion to reconsider that action – was violated, where an attorney for the clerks of the Tenth Circuit Court of appeals in deciding not to file the post-judgment motions also stated that no further motions would be accepted, precluding a motion to reconsider that adverse action, where denial of the post-judgment relief motion is not harmless?

4. Whether an attorney for the clerks of a Court of Appeals of the Tenth Circuit is considered a judicial officer, dethatched and impartial, where that attorney ruled for and on behalf of the Tenth Circuit Court of appeals that no post-judgment motions could be filed in the case where the post-judgment motions implicitly or explicitly accused the clerical staff of possible misconduct of violating Tenth Circuit procedures, and where no law or rule permits an attorney for the clerical staff to make such a ruling, where denial of the post-judgment relief motion is not harmless?

5. Whether due process of law is denied where a staff attorney for the Tenth circuit Court of Appeals decides on behalf of the Tenth Circuit, citing to no authority for his actions, and where no authority is believed to exist, to disallow the filing of a post-judgment motion, where that denial prevents raising the matter of the motion in this Court because it is not part of the record in the Tenth Circuit and would not be considered as having been raised in that court on appeal to this Court, where denial of filing of the post-judgment relief motion is not harmless?

6. Whether the Tenth Circuit can delegate to a staff attorney who represents the interests of the clerical staff the decision making power to file or not file a post-judgment relief motion in that court?

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Appendix A - United States Court of Appeals for the Tenth Circuit Order affirming Dismissal.

Appendix B – Order on Rehearing

Appendix C – Letter from Attorney for the clerical staff of the Tenth circuit.

Appendix D – Tenth Circuit Docket for Case

OPINIONS BELOW

On July 5, 2007 the District Court entered an Order Dismissing the Case. (Appendix A).

On August 6, 2007 the Court of Appeal for the Tenth Circuit entered an Order denying Rehearing. (Appendix B).

JURISDICTIONAL STATEMENT

The date the Order and Judgment was entered by the Court of Appeals for he Tenth Circuit was July 5, 2007.

After a petition for rehearing was denied on August 6, 2007.

The clerical staff allowed a 60 day extension of time to re submit this Petition.

This Court's jurisdiction to for an extraordinary writ is conferred by 28 U. S. C. § 1651(a).

No other court can give the releif sought, the act at issue is the Clerk of the Tenth Circuits, U.S. Court of Appeals, refusal to file post-judgment motions in an Appeal which precludes review by the Tenth Circuit Justices assigned to the case. Further, the decision by the Clerk of the Tenth Circuit conflicts with Fed. R. App. Proc. 27(b) which allows an Appellant in the U.S. Court of Appeals to challenge decisions such as this where the Petitioner has been adversely affected by that decision.

Here substantial evidence exists that no Appellat Justice

for the Tenth Circuit read the final Order in the appeal. For example, the Court talks about an Appellant in its Order/Opinioin that is not a party to the case and nowhere in mentioned in the case, which easily would have been caught by a one of the three Justices assigned, finding of facts are made for the first time which conflict with the facts in the lower court, no signatures appear on the Order/Opinion of the case and no mention of the concurring opinions of the other 2 justices assigned the the case is found. See Rule 20(3).

Petitioner sees no other court except this one who can order her to file the post-judgment motion which would allow the Tenth Circuit to review whether there were clerical mistakes which allowed the Opinion/Order of the case to be filed without some or each of the Justices assigned to the case to review the Opinion/Order prior to its publication.

Petitioenr seeks an opportunity to file a post-judgment motion in Tenth Circuit Court of Appeals similar to what is permitted by Fed. R. Civ. Proc. 60 and for Nothing in the Fed. R. App. Proc. Preclude such a motion.

CONSTITUTIONAL PROVISIONS

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any

person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

RULES

Federal Rule of Civil Procedure 60

Rule 60. Relief from Judgment or Order

(a) Clerical Mistakes.
Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.
On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse

party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Federal Rule of Appellate Procedure 27 (b)

(b) Disposition of a Motion for a Procedural Order. The court may act on a motion for a procedural order – including a motion under Rule 26(b) – at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in

whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

Tenth Circuit Local Rule -
For Federal Rule of Appellate Procedure 27.3(A)

10th Cir. R. 27.3 (A) Motions. Subject to review by the court, the clerk is authorized to act for the court on any of the following motions:
(1) to extend time to file a pleading or perform an act required by Fed. R. App. P. 10, 11, 12, 13(d), 17, 24, 27, 29, 30, 31, 39, or 40, or by Rule 3, 10, 11, 14, 15, 17, 20, 24, 27, 30, 31, 40, or 46;
(2) to correct a brief or pleading;
(3) to supplement or correct records or to incorporate records from previous appeals;
(4) to consolidate appeals;
(5) to substitute parties;
(6) to appear as amicus curiae;
(7) to expedite or continue cases;
(8) to withdraw or substitute counsel in a civil case or, after compliance with Rule 46.4, in a criminal case;
(9) by appellant to dismiss an appeal (in criminal and postconviction cases, see Rule 46.3(B)), or a stipulation for dismissal, with or without an agreement on payment of costs (if an appeal is dismissed, the clerk may issue a certified copy of the dismissal order as the mandate);
(10) for extension of time to file a petition for rehearing, limited to one extension of 15 days or less;
(11) a motion under Rule 30.2 or 30.3; or
(12) any other motion the court may authorize.

STATEMENT OF THE CASE

On or about April 19, 2005, Counsel for Brigham Young University attended a federal court hearing in the district of Utah where he appeared representing Brigham Young University. At that hearing, which Petitioner appeared via phone from California, counsel learned that Petitioner was homeless and did not have the financial means to travel to Utah.

On or about May 25, 2005, Counsel for Brigham Young University went before an state court judge and in an ex parte proceeding, obtained an order for Petitioner to appear in Utah for a hearing, and the Order stated that if Petitioner did not attend the hearing he could be arrested.

Petitioner was unable to attend the hearing, and the state of Utah issued a warrant for Petitioner's arrest.

Utah Rules of Professional Conduct 3.3 requires that counsel for Brigham Young University inform the judge in an ex parte hearing all material facts relevant to the judge's ability to make a fair ruling on an ex parte matter. Utah law states that the ability to comply with an Order is material and Brigham Young University failed to inform the judge that Petitioner could not make the hearing, guaranteeing them the arrest warrant.

Petitioner filed an action against Brigham Young University alleging various causes of action under state and federal law regarding the arrest warrant, the manner

in which it was obtained, and its impact on Petitioner's state and federal rights such as the right to interstate travel, the right to attend state and federal hearings, obtain witness testimony and the like as a result of the arrest warrant which precluded Petitioner from entering Utah.

A cause of action for separation of church / state was included as a result of the disproportionate Mormon Judges in Utah to Non-Mormon. Utah is about 51% Mormon, yet of the 12 judges in the district where Brigham Young University resided, 12 are Mormon. Of the 7 Appellate Justices in Utah, 7 are Mormon. Petitioner showed that due to Mormon teachings and beliefs, that due process of law in his state case against Brigham Young University was denied as a result of religious bias in the Utah judiciary.

The case was dismissed sua sponte without any answer to the complaint. Although the Tenth Circuit upheld dismissal, none of the reasons for dismissal in the district court were upheld, and the Tenth Circuit fashioned its own basis for dismissal. In addition to the Utah District Court disallowing briefing of the case, the Tenth Circuit refused to allow Petitioner any chance to file a Reply brief in the appeal.

Although dismissal was affirmed, the Tenth Circuit completely changed the facts which appeared in the Complaint, replacing them with new facts to support dismissal which are non-exist ant. The Tenth Circuit also failed to follow their own case law in finding a lack of standing for the establishment clause, and made various rulings which are contradicted by this Court's

precedents.

Dismissal was troubling to Petitioner and he noticed various irregulaties in the dismissal of the case. For example, 3 appellate justices presided in the case, however, no record of whether the other 2 justices concurred is found. Perhaps there was some mistake where the Opinion was submitted prior to the other 2 Justices reviewing it.

Petitioner was suspect also because the actual Order affirming dismissal referred to a Plaintiff which doesn't exist anywhere in the case. See Appendix A at 8 ("Mr. Lawrence alleged that BYU and its attorneys violated 18 U.S.C. § 1503 ...") In fact the name of the person mentioned does not appear anywhere in the case.

That mistake broadsided Petitioner as obvious, and Petitioner could not figure out how 3 Appellate Justices could have missed such an obvious mistake and asked "who is Mr. Lawrence". This is also supportive that the other 2 Justices did not review the Opinion and perhaps the authoring Justices never reviewed it either. e.g. a law clerk prepared it by delegation and perhaps mistakenly submitted it to the court prior to it being reviewed.

Petitioner also was alarmed that no signatures appeared anywhere of the Appellate Justices hearing the case.

Combined with the factual and legal infirmities of the Opinion dismissing the case, Petitioner became very concerned that no Appellate justices had actually read either the Opinion or the brief of the Petitioner on

appeal. Petitioner also filed a Motion to reconsider the Order affirming dismissal.

If none in fact read the Opinion Petitioner believes that would constitute an abdication, and not delegation, of their authority. If the clerical staff or law clerks drafted the Opinion without any Justice being aware of their acts, or it was submitted to the clerk of court to file prior to it being reviewed by the Justices, then a clerical mistake or improper conduct could be found. While Petitioner does not make such an allegation without some degree of caution, he believes there is sufficient evidence, taken as a whole, that some type of irregularity occurred.

Petitioner wanted to file various post-judgment motions to make sure that the justices had in fact read the opinion and the briefs in the case. However, Tenth Circuit Local Rules require the Petitioner first obtain the position of the opposing party prior to filing the motion, which can take time.

Petitioner had also spoke with the Deputy Chief of the Clerical staff of the Tenth Circuit and raised various concerns about the anomalies. Petitioner was told among other things that only one justice had reviewed the motion to reconsider and based solely on that justice's decision, the motion was denied. Petitioner was also told that no Justice of the Tenth Circuit ever signed Opinion for Appellate cases.

Based on that conversation, Petitioner wanted to file a motion to make sure each justice had seen and ruled on the Opinion and that it had not been filed pre-maturely

by some mistake without the Justices reading it.

However, Petitioner received in response the letter of Appendix C from an attorney representing the Tenth Circuit Clerical staff that it would not be filed.

ARGUMENT
REASONS FOR GRANTING THE WRIT

First, an attorney for the clerical staff does not have authority to make such rulings. Tenth Circuit Local Rule 27.3 (A) is specific in what motions and matters a clerk can decide and post-judgment motions of the nature filed do not qualify as matters the clerical staff has been delegated by the Justices.

Further, an attorney to the clerical staff does not qualify as a clerk. Even if they did, there are no provisions authorizing that attorney to make such a decision on behalf of the Tenth Circuit. Graduating from law school and passing the bar exam likewise can not somehow create authority or transform an attorney into someone to make decisions for the Justices of the Tenth Circuit.

Second, Appendix C shows that the attorney also refused to accept further filings. That conflicts with Fed. R. App. Proc. 27(b) which allows the filing of a motion to reconsider an adverse decision by a clerk. (Yet a staff attorney is not a clerk). Disallowing any opportunity to challenge the decision of Appendix C violates Fed. R. App. Proc. 27(b).

Third, a staff attorney is not dethatched. Appendix C shows that the attorney is counsel to Elizabeth A. Shumaker, who is the Clerk of the Court. That

attorney's interest is the interests of their client which might conflict with the interests of Petitioner or the Tenth Circuit or Due Process of law.

If there mistake or misconduct by the clerical staff, Elizabeth A. Shumaker would likely not want that to come to the attention of the Justices which would occur if the filing of the motions were allowed. Thus her attorney, who issued the decision not to file the motions, would also not want the motions to be filed was that would be in the interest of the attorney's client.

Fourth, Fed. R. Civ. Proc. 60 provides for post-judgment relief. It should follow that due process of law (U.S. Constitution Amend. V) as embodied in the Federal Appellate Rules of Procedure would allow for such relief at the appellate level. Fed. R. App. Proc. 27 allows for various motions, and nothing in Rule 27 precludes post-judgment motions. Thus the decision of the attorney to the Clerk of the Court for the Tenth Circuit should be vacated or overturned by this Court.

Post-Judgment relief at the appellate level should be allowed as it would allow for the Tenth Circuit to correct their own mistakes without intervention and valuable time from this Court. Further, due process of law would be better served as the Tenth Circuit is best able to review their internal mistakes and review from this Court is discretionary so although an appeal on procedural/clerical matters at the Tenth circuit might have merit, it could still be denied.

Fifth, review by this Court generally requires that the argument be raised in the lower courts. So denial of the filing of the post-judgment motions is critical to get the

facts and arguments in the record to preserve the Petitioner's rights on appeal to this Court. Petitioner's understanding of the meaning of Certiorari is "send us the record" and if the legal and factual arguments are not found in the record because an attorney for the Clerk of Courts for the Tenth Circuit, whose authority to issue such a decision is questioned, says they can't be filed, then meaningful review by this Court is hindered.

Lastly, the denial of the post-judgment motions is not harmless. Although the Opinion of the Tenth Circuit upholding dismissal may appear plausible at first reading, there are numerous factual misrepresentations and legal infirmities in that Opinion which can be shown when a Petition for Writ of Certiorari is filed in that case.

For example, dismissal was affirmed on the §1983 cause of action because no conspiracy was found. However, Petitioner never alleged a conspiracy under §1983 and alleged instead that counsel for BYU acted in concert etc. with the judge to obtain the illegal arrest warrant for Petitioner, which is sufficient under Tenth Circuit case law for §1983 liability for the otherwise non-state actors of counsel for BYU.

Another example, in the §1985 claim, the Tenth Circuit implicitly ruled that where many (7 for example) people are alleged to have conspired to violate the civil rights of a person, and one of the 7 is found to not have participated in the conspiracy, then each of the others are not liable under §1985.

Also, Under the RICO claim, the Tenth Circuit states that Petitioner alleges that the illegal arrest warrant was

used to interfere with the duties of a judge or juror. However, the actual allegation was that the illegally obtained arrest warrant interfered with Petitioner's ability to obtain discovery material (evidence) from witnesses because the arrest warrant precluded his entry into Utah to conduct the discovery. Likewise, Petitioner alleged that the illegally obtained arrest warrant precluded Petitioner from attending various federal and state court hearings which were scheduled – each of which support the RICO claim.

Another example is the Tenth Circuit implies Petitioner sought monetary damages from the state court judge which was not the case. Petitioner did seek to have the Tenth Circuit issue a writ if mandate to vacate the unlawfully obtained arrest warrant.

Also, the Opinion completely omits any mention of the most important fact of the case which was that BYU and its counsel violated Utah Rule of Professional Conduct 3.3 to obtain the arrest warrant where BYU was aware he could not travel to Utah for that hearing when the sought ex parte the Order requiring Petitioner to attend the hearing or face arrest.

CONCLUSION & RELIEF SOUGHT

Petitioner asks that a writ if mandate or other similar Order issue from this Court to the Clerk of Courts for the Tenth Circuit that the Tenth Circuit file Petitioner's "Motion for Justices to Certify They Read the Judgment Affirming Dismissal". This shall allow a review to ensure that each of the three Justices of the Tenth Circuit presiding in the appeal had a chance to read and approve or disapprove of the Order issued. Due to the numerous

factual and legal infirmities and errors in the Order, and because no indication as to whether the non-authoring Justices concurred in the Order, because the Order was not signed, and because the Order refers to a non-existent Appellant, there is sufficient basis to allege a mistake occurred and the Order was not in fact properly reviewed prior to its issuance.

Also, an Order allowing Petitioner to file a motion to challenge the denial of the Petitioner for Rehearing on procedural grounds (filed as a Motion to Vacate that denial) is sought. Sufficient basis exists for that motion because Petitioner was told by the Deputy Clerk that only one Justice ruled on the denial of the Petition for Rehearing based on that one Justice's decision, the rehearing motion was denied, and due process of law would require that each Justice review the motion.

Respectfully Submitted,

s/_____

Aaron Raiser

Appendix A - United States Court of Appeals for the Tenth Circuit Order affirming Denial of Pseudonym. (See Petition for needed factual correction of the Order)

United States Court of Appeals,
Tenth Circuit.

Aaron RAISER
Plaintiff-Appellant,
v.
DAVID M. KONO; DANIEL L. STEELE; FRED HOWARD, official capacity; BENNETT TUELLER JOHNSON & DEERE; BRIGHAM YOUNG UNIVERSITY; JON HUNTSMAN, official capacity,
No. 06-4243
(D.C. No. 2:06-CV-256-TC)
(D. Utah)
July 5, 2007

Before McCONNELL, PORFILIO, and BALDOCK, Circuit Judges.

ORDER AND JUDGMENT [FN*]

FN*. After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R.App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally

disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3. It may be cited, however, for its persuasive value consistent with Fed. R.App. P. 32.1 and 10th Cir. R. 32.1.
Plaintiff-appellant Aaron Raiser appeals the district court's sua sponte dismissal of his First Amended Complaint, which attempted to set forth civil rights and RICO claims, and its denial of his motion for recusal of a magistrate judge. Because we conclude that it is patently obvious that Mr. Raiser could not prevail on the facts and theories alleged, we affirm.

I.

This case has its origin in a Utah state-court case filed by Mr. Raiser against Brigham Young University (BYU), which was represented by David M. Kono and Daniel L. Steele, of the law firm of Bennett Tueller Johnson & Deere.

In that case, defendant Judge Fred Howard issued a civil bench warrant on July 19, 2005, when Mr. Raiser failed to appear for a supplemental hearing noticed by defendants "to identify property and to apply the property toward the
satisfaction" of an attorney-fee award entered as a sanction. See Utah R. Civ. P. 64(c)(2). FN1 The bench warrant was stricken on August 19, 2005.

[FN1] Mr. Raiser asserts error in defendants' state-court citation to repealed Utah R. Civ. P. 69, which addressed proceedings supplemental to the execution of a judgment until November 1, 2004. The erroneous citation did not affect
Mr. Raiser's rights in any way and does not constitute

grounds for reversal.

Mr. Raiser then filed this case in federal district court, alleging that BYU, its lawyers, and the law firm conspired with Judge Howard to violate his constitutional rights to interstate travel, access to federal and state courts in Utah,
due process, and equal protection of the laws. He claimed that the attorneys were aware that he was homeless and could not afford to appear for the Rule 64(c)(2) hearing, but they did not inform Judge Howard of this fact.

And even after Mr. Raiser advised the court of his financial situation, Judge Howard did not retract the warrant. According to Mr. Raiser's Amended Complaint, BYU, the attorneys, the law firm, and Judge Howard violated the civil-rights provisions of 42 U.S.C. §§ 1983 and 1985 and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968. Also, he alleged that BYU,
the attorneys, and the law firm committed common-law extortion and fraud on the court. Finally, Mr. Raiser claimed that defendant Governor Jon Huntsman and Judge Howard should be held liable under § 1983 for religious bias in the
selection process for filling vacancies in the Utah judiciary.
The district court sua sponte dismissed Mr. Raiser's claims for failure to state a claim on which relief can be granted.FN2 It also denied his motion under 28 U.S.C. § 455 for recusal of the magistrate judge. On appeal, Mr. Raiser argues that his complaint was sufficient in all respects and takes issue with the denial of recusal.

[FN2] Several actions on the part of Mr. Raiser and the district court preceded the dismissal. First, the Chief Judge of the United States District Court for the District of Utah placed appellant Aaron Raiser on that court's restricted filer list. Pursuant to the restriction order, a magistrate judge determined that Mr. Raiser's initial complaint was deficient and recommended that the court dismiss the action.

Mr. Raiser filed an untimely objection to the magistrate judge's report. The district court conducted a de novo review of the amended complaint and dismissed the case, mentioning the restriction order and citing 28 U.S.C.
§ 1915(e)(2)(B) (providing for dismissal of deficient complaint filed by a pro se litigant proceeding in forma pauperis) and McKinney v. State of Okla. Dep't of Human Servs., 925 F.2d 363, 365 (10th Cir. 1991) (discussing the court's inherent power to enter a sua sponte dismissal of a patently deficient complaint). Today,
this court reverses and remands the Chief Judge's order for a procedural irregularity. See In re Raiser, No. 06-4116 (10th Cir. July 5, 2007). And, because Mr. Raiser was not proceeding in forma pauperis in the district court,
28 U.S.C. § 1915(e)(2)(B) is inapplicable. Accordingly, this court reviews the district court's dismissal under the theory discussed in McKinney. See Mann v. Boatwright, 477 F.3d 1140, 1145 (10th Cir. 2007) (stating that we may affirm the
judgment below "on any grounds for which there is a record sufficient to permit conclusions of law, even

grounds not relied upon by the district court) (quotation omitted).

II.

Dismissals under Rule 12(b)(6) typically follow a motion to dismiss, which gives the plaintiff notice and an opportunity to amend his complaint. But in this circuit, "sua sponte dismissal of a meritless complaint that cannot be salvaged by amendment comports with due process and does not infringe the right of access to the courts." Curley v. Perry, 246 F.3d 1278, 1284 (10th Cir. 2001). A sua sponte dismissal under Rule 12(b)(6) is not reversible error when: (1) it is "patently obvious that the plaintiff could not prevail on the facts alleged"; and (2) "allowing [the plaintiff] an opportunity to amend his complaint would be futile." McKinney v. State of Okla. Dep't of Human Servs., 925 F.2d 363, 365 (10th Cir. 1991) (quotation omitted); see also Andrews v. Heaton, 483 F.3d 1070, 1074 n.2 (10th Cir. 2007).

When ruling on dismissal, "a judge must accept as true all of the factual allegations contained in the complaint." Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007). A complaint "does not need detailed factual allegations," but "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do. Factual allegations must be enough to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1965 (2007) (quotation, alteration, and citation omitted).

This court reviews de novo a district court's dismissal for failure to state a claim upon which relief can be granted. Ruiz v. McDonnell, 299 F.3d 1173, 1181 (10th Cir. 2002). Based on our de novo review, we conclude that it was appropriate to dismiss Mr. Raiser's all claims against all defendants.

Claims against Judge Howard

To the extent that Mr. Raiser seeks monetary damages from Judge Howard for actions taken in his judicial capacity, the claims were properly dismissed under the doctrine of absolute judicial immunity. See Mireles v. Waco, 502 U.S.
9, 11 (1991) (per curiam). And "[f]ederal courts have no authority to issue a writ of mandamus to a state judge." Olson v. Hart, 965 F.2d 940, 942 (10th Cir. 1992). Accordingly, Mr. Raiser's request for a writ of mandamus requiring Judge
Howard to rescind the bench warrant and fee award was not actionable. His request for a declaratory judgment against Judge Howard concerning the constitutionality of Utah's debt-collection procedures likewise is unavailing.
"The Eleventh Amendment does not permit judgments against state officers declaring that they violated federal law in the past." Johns v. Stewart, 57 F.3d It is appropriate t 3 o repeat our previous comment that "merely because [a
judge] belongs to and contributes to the Mormon Church would never be enough to disqualify him." In re McCarthey, 368 F.3d 1266, 1270 (10th Cir. 2004); see also Singer v. Wadman, 745 F.2d 606, 608 (10th Cir.

1984) (affirming denial of disqualification of judge, who was a Mormon, in case which plaintiff claims was "a challenge to the theocratic power structure of Utah"). 1544, 1553 (10th Cir. 1995) (quotation omitted). The district court did not err in
dismissing the claims against Judge Howard.

Claims against Governor Huntsman

Mr. Raiser asserts that Governor Huntsman has violated his constitutional rights by exercising the power to appoint members of state judicial-selection committees in a way that results in a state judiciary composed disproportionately
of judges belonging to the Church of Jesus Christ of Latter-day Saints (Church).

He seeks a writ of mandamus requiring the Governor to instruct members of the committees to disregard candidates' religious affiliation, while at the same time making progress toward decreasing the number of Church members. He alleges that, in lawsuits he files against Church-related entities, Church-member judges will be biased against him.3
Any potential future harm that may befall Mr. Raiser from the Utah judicial-selection procedures is too speculative to fulfill the requirement of Article III of the United States Constitution that a case present a "case or controversy" between the individually named plaintiff and defendant. The
Supreme Court has recognized that claims predicated upon such speculative contingencies afford no basis for finding the existence of a continuing controversy. See Rizzo v. Goode, 423 U.S. 362, 371-73 (1976). The

federal courts lack jurisdiction to consider Mr. Raiser's claim and therefore dismissal was appropriate.

Claims against BYU and its attorneys

42 U.S.C. § 1983

As a basis for his § 1983 civil-rights claim, Mr. Raiser argues that BYU and its attorneys were acting under the color of state law because they engaged in concerted action with Judge Howard. It has been held that "an otherwise private
person acts 'under color of' state law when engaged in a conspiracy with state officials to deprive another of federal rights." Tower v. Glover, 467 U.S. 914, 920 (1984). However, "[w]hen a plaintiff in a § 1983 action attempts to assert the necessary 'state action' by implicating state . . . judges in a conspiracy with private defendants, mere conclusory allegations with no supporting factual
averments are insufficient; the pleadings must specifically present facts tending to show agreement and concerted action." Sooner Prods. Co. v. McBride, 708 F.2d
510, 512 (10th Cir. 1983). This "standard is even stricter where the state officials allegedly involved in the conspiracy are immune from suit, as [is] the state court judge[] here." Id.

Mr. Raiser's amended complaint contains extensive allegations, but he does not present any facts establishing an agreement or meeting of the minds between BYU, its attorneys, and the state actors to deprive him of any federal rights. Thus, he failed to state a § 1983 claim. See id.; cf. Bell Atl. Corp., 127 S.

Ct. at 1965, 1974 (holding that a complaint under § 1 of the Sherman Act is subject to
dismissal for failure to state a claim if it does not provide "enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement" and stating, "we do not require heightened fact pleading of specifics, but only
enough facts to state a claim to relief that is plausible on its face. Because the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed"). The district court did not err in
dismissing the § 1983 claims against BYU and its attorneys.

42 U.S.C. § 1985 and RICO Mr. Raiser also alleges that BYU and its attorneys violated 42 U.S.C. § 1985 and RICO. Specifically, he argues that the bench warrant was traceable to their conspiracy to prevent him from tending to his lawsuits in Utah federal and state courts. A deterrence claim under § 1985 arises when:

[T]wo or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or ... conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws. . . .

§ 1985(2). But "legal claims possessing a reasonable basis in law and fact simply do not constitute the 'force or intimidation' necessary to satisfy § 1985(2)."

Timmerman v. U.S. Bank, N.A., 483 F.3d 1106, 1124 (10th Cir. 2007). The issuance of the bench warrant was a natural consequence of Mr. Raiser's failure to appear for the enforcement hearing. Defendants' actions in obtaining an award of attorneys' fees, setting an enforcement hearing, failing to inform the court of Mr. Raiser's financial status, seeking a bench warrant, and making a settlement offer cannot support a § 1985 claim.

Mr. Lawrence alleged that BYU and its attorneys violated 18 U.S.C. § 1503 (obstructing justice by trying to influence a juror or officer of the court) as part of his RICO claim. For the same reasons discussed above, Mr. Raiser's allegations
do not describe conduct constituting the obstruction of justice. The RICO claim is meritless and was subject to dismissal.

Common law extortion and fraud upon the court
Mr. Raiser alleges that the same acts of these defendants also make them liable under common-law extortion and fraud-on-the-court theories. Generally, common-law extortion by a private person "is limited to obtaining property by
threatening to inflict harm." Rael v. Sullivan, 918 F.2d 874, 876 n.1 (10th Cir. 1990) (quotation omitted). And this court has explained that "only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute a fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to
the level of fraud on the court." United States v. Buck,

281 F.3d 1336, 1342 (10th Cir. 2002) (quoting Weese v. Schukman, 98 F.3d 542, 552-53 (10th Cir. 1996)) (further quotation omitted).

Taken as a whole, the allegations in the amended complaint fall far short of asserting cognizable extortion or fraud-on-the-court claims. These claims, too, were properly dismissed.

III.

Finally, Mr. Raiser argues that the district court wrongfully denied his motion to recuse the magistrate judge because the applicable statutory provision states that "a judicial official "shall disqualify himself in any proceeding in which
his impartiality might reasonably be questioned." 28 U.S.C. § 455(a) (emphasis supplied). Mr. Raiser asserts that the provision's wording requires the magistrate judge, not the district court, to rule on his motion. Having reviewed the district court's decision for an abuse of discretion, United States v. Mendoza, 468 F.3d 1256, 1262 (10th Cir. 2006), we see no error in either the district court's procedure or its determination.

IV.

The judgment of the district court is AFFIRMED. The Motion for Leave to File Appellees' Brief received from BYU, its attorneys, and their law firm is GRANTED. Mr. Raiser's renewed Motion to Strike Entry of Appearance and
Motion to Present Oral Argument are DENIED.

Entered for the Court
s/_____
John C. Porfilio
Circuit Judge

Appendix B - Order On Rehearing

United States Court of Appeals,
Tenth Circuit.

Aaron RAISER
Plaintiff-Appellant,
v.
DAVID M. KONO; DANIEL L. STEELE; FRED HOWARD, official capacity; BENNETT TUELLER JOHNSON & DEERE; BRIGHAM YOUNG UNIVERSITY; JON HUNTSMAN, official capacity,
No. 06-4243
(D.C. No. 2:06-CV-256-TC)
(D. Utah)
Order Denying Rehearing
August 6, 2007

Before McCONNELL, PORFILIO, and BALDOCK, Circuit Judges.

Appellant's Petition for Rehearing is denied.

Entered For the Court
Elizabeth A. Shumaker, Clerk

By: s/_____

Deputy Court Clerk

Appendix C – Letter from Attorney for Tenth circuit clerical staff

United States Court of Appeals,
Tenth Circuit
Office of the Clerk
Byron White United States Courthouse
Denver, Colorado, 80257
(303) 844-3157

Elizabeth A. Shumaker
Clerk of Courts

Douglas E. Cressler
Chief Deputy Clerk

August 22, 2007

Mr. Aaron Raiser
20058 Ventura Blvd. #113
Woodland Hills, CA 91364

Re: #06-4243; Raiser v. Kono

Dear Mr. Raiser:

The court has received your "motion For the Justices to Certify they Read the Judgment Affirming Dismissal in the Appeal," and your separate motions that request that the order denying your petitioner for panel rehearing be vacated and that the judges certify, with signatures, that they read your petition for panel rehearing and your motion to vacate the order denying your petition for panel rehearing.

Your motions will not be acted upon. Your rehearing petition was denied on August 6, 2007 and you case (06-4243) is closed. No further filings will be accepted in that appeal. Further filings will be discarded without notice.

Very truly yours,

s/_____
Christine Van Coney, Counsel to the Clerk

Appendix D – Docket U.S. Court of Appeals for the Tenth Circuit

Docket: U.S. Court of Appeals for the Tenth Circuit
Case: 06-4243

10/12/2006 Civil case docketed. Preliminary record filed. DATE RECEIVED: 10/12/06. Record on appeal due 10/26/06 for Markus B. Zimmer Notice of appearance due 10/26/06 for Jon Huntsman and Fred Howard.
10/12/2006 Pro se notice of appearance filed by Aaron Raiser in 06-4243. CERT. OF INTERESTED PARTIES (y/n): n.
10/12/2006 Pro se docketing statement filed by Aaron Raiser in 06-4243. Original and 4 copies c/s: y.
10/23/2006 Notice of appearance filed by Brent M. Johnson as attorney for Fred Howard in 06-4243. CERT. OF INTERESTED PARTIES (y/n): n.
10/30/2006 Record on appeal filed: 1 Volume - Pleadings. Copy filed in Volume (y/n): y. Filed on 10/27/06.
10/31/2006 Jurisdictional review complete. Appellant's brief due 12/11/06 for Aaron Raiser.
11/02/2006 Notice of appearance filed by Nancy L. Kemp in 06-4243 as attorney for Jon Huntsman. CERT. OF INTERESTED PARTIES (y/n): n.
11/22/2006 Appellant's motion filed by Appellant Aaron Raiser in 06-4243 to extend time to file appellant's brief until 1/10/07. [06-4243] Original and 3 copies. c/s: y.
11/22/2006 Order filed by Clerk granting Appellant's motion to extend time to file apet brief. [1977520-1] A/Pet brief due 1/10/07 for Aaron Raiser. No further

extensions of time will be granted on the clerk's authority. Parties served by mail.
01/09/2007 Appellant's brief filed by Aaron Raiser in 06-4243. Original and 7 copies. c/s: y. Served on 1/8/07. Oral argument? Pro Se. Appellees' brief due 2/12/07 for Jon Huntsman and Fred Howard.
01/16/2007 Notice of appearance filed by David M. Kono and Daniel L Steele in 06-4243 as attorneys for David Kono, Daniel L. Steele, Bennett Tueller, and Brigham Young in 06-4243. CERT. OF INTERESTED PARTIES (y/n): n.
01/24/2007 Appellee's notice that response brief will not be filed by Appellee Fred Howard in 06-4243. Original and 7 copies. c/s: y.
01/24/2007 Appellant's motion filed by Appellant Aaron Raiser in 06-4243 to strike entry of appearance and certificate of Interested parties. Original and 3 copies. c/s: y.
01/24/2007 Order filed by Clerk denying Appellant's motion to strike entry of appearance and certificate of interested parties [1994759-1]. Parties served by mail.
01/24/2007 E-Brief received from Appellee Jon Huntsman in 06-4243. Submission Type: Email.
01/26/2007 E-Brief received from Appellee Jon Huntsman in 06-4243. Submission Type: email.
01/30/2007 Appellee's brief filed by Jon Huntsman in 06-4243. Original and 7 copies. c/s: y. Served on 1/25/07. Oral Argument? n. Appellant's optional reply brief due 2/12/07 for Aaron Raiser.
02/01/2007 Appellant's reply brief filed by Aaron Raiser in 06-4243. Original and 7 copies. c/s: y.
02/06/2007 E-Motion (Motion for Leave to File Appellees' brief) received from David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham Young in 06-

4243. Submission type: email.
02/08/2007 Appellant's "Renewed motion to strike" filed by Appellant Aaron Raiser in 06-4243 [06-4243]. Original and 3 copies. c/s: y
02/08/2007 Motion for leave to file appellees' brief [06-4243] filed by David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham in 06-4243. Original and 3 copies. c/s: y
02/12/2007 E-Brief Brief received from David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham Young in 06-4243 Submission Type: email
02/12/2007 E-attachment to the brief received from David M. Kono, Daniel L. Steele, Bennett Tueller, and Brigham Young in 06-4243. Submission type: email
02/12/2007 Appellant's renewed motion to strike submitted to court.
02/12/2007 Motion for leave to file appellees' brief filed by David M. Kono, Daniel L. Steele, Bennett Tueller, and Brigham Young in 06-4243 submitted to court.
02/12/2007 Order filed by Judges Kelly and McConnell referring Appellant's renewed motion to strike [1999399-1] and motion for leave to file appellees' brief [1999401-1] TO THE PANEL ON THE MERITS. Parties served by mail.
02/12/2007 Appellant's response filed by Aaron Raiser in 06-4243 to motion for leave to file a briefi. Original and 3 copies. c/s: y
02/13/2007 Appellees' brief received from David M. Kono, Daniel L. Steele, Bennett Tueller, and Brigham Young in 06-4243, but not filed (pending motion). Original and 7 copies. c/s: y.
02/14/2007 Order filed by Clerk referring Appellant's "Opposition to Motion to File Brief," [2000545-1] REFERRED TO PANEL

ON THE MERITS. Parties served by mail.
02/14/2007 Other E-document received from David M. Kono, Daniel L. Steele, Bennett Tueller, Brigham Young in Pleading type: Reply in Support of Motion for Leave to File Appellees Brief. Submission type: Email.
02/14/2007 Other E-document received from David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham Young in 06-4243. Pleading type: Memorandum in Opposition. Submission type: Email.
02/15/2007 Reply filed by David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham Young in 06-4243 to Appellant's response. Original and 3 copies. c/s: y
02/15/2007 Order filed by Clerk referring reply memorandum [2002079-1] REFERRED TO PANEL ON THE MERITS. Parties served by mail.
02/15/2007 Response in opposition filed by David M. Kono, Daniel L. Steele, Bennett Tueller and Brigham Young in 06-4243 to Appellant's motion to strike. Original and 3 copies. c/s: y
02/15/2007 Order filed by Clerk referring response in opposition to motion to strike [2002083-1] REFERRED TO PANEL ON THE MERITS. Parties served by mail.
04/11/2007 Case submitted to panel on the briefs pursuant to Rule 34 for Conference Calendar.
05/08/2007 Motion filed by Appellant Aaron Raiser in 06-4243 to present oral argument [06-4243]. Original and 3 copies c/s: y.
05/08/2007 Appellant's motion to present oral argument submitted to court.
07/05/2007 Order filed by Judges McConnell, Porfilio and Baldock. The Motion for Leave to File Appellees' Brief received from BYU, its attorneys, and their law firm is GRANTED. [1999401-1] Mr. Raiser's renewed Motion to Strike Entry of Appearance and Motion to

Present Oral Argument are DENIED. (located in the Order and Judgment). [1999399-1] [2027626-1]
07/05/2007 Terminated on the Merits after Submission Without Oral Hearing; Affirmed; Written, Signed, Unpublished. McConnell; Porfilio, authoring judge; Baldock. [06-4243] Parties served by mail on 7/5/07.
07/11/2007 Motion for Enlargement of Time to File Petition for Panel Rehearing filed by Appellant Aaron Raiser in 06-4243 until 8/20/07 [06-4243]. Original and 3 copies c/s: y.
07/11/2007 Appellant's motion to extend time to file petition for rehearing submitted to court.
07/16/2007 Order filed by Judges McConnell, Porfilio, and Baldock granting Appellant's motion to extend time to file petition for rehearing [2045007-1]. Apellant's petition for rehearing must be filed on or before 7/30/07. No further extensions of time will be granted. Parties served by mail.
07/30/2007 Petition for rehearing [06-4243] filed by Aaron Raiser in 06-4243. Original and 3 copies. c/s: y.
07/30/2007 Document [2049931-1] Petition for rehearing filed by Appellant Aaron Raiser submitted to panel.
08/02/2007 Amended certificate of service (for the petition for Panel Rehearing) filed by Aaron Raiser in 06-4243.
08/06/2007 Order filed by Judges McConnell, Porfilio, and Baldock denying Petition for rehearing [2049931-1].
08/14/2007 Mandate issued. Record on appeal return due 12/12/07.
08/22/2007 Motion for Justices to Certify They Read the Judgment Affirming received from Aaron Raiser in 06-4243, but not filed. Original and 3 copies. - Letter sent in response.

08/22/2007 Motion requesting Petition for Rehearing be Vacated for received from Aaron Raiser in 06-4243, but not filed. Original and 3 copies. Letter sent in response.
09/14/2007 Document: 1) Motion to Vacate Order Denying Oral Argument; 2) Motion to Vacate Order Denying the Filing of Post-Judgment Motions received from Aaron Raiser but not filed. Original and 0 copies. Served on 09/14/2007. Manner of Service: US Mail. (Response letter sent by dec).